

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
DAVID M. HERZOG (Cal. Bar No. 224594)
4 Assistant United States Attorney
1400 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-0600
Facsimile: (213) 894-0142
7 Email: david.herzog@usdoj.gov

8 Attorneys for Plaintiff
UNITED STATES OF AMERICA
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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ROBERT VERNON ROZELLE,

16 Defendant.
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NO. CR 92-00336-CBM

GOVERNMENT'S REPLY TO DEFENDANT'S
OBJECTIONS TO REPORT AND
RECOMMENDATION

DATE: JULY 21, 2008
TIME: 1:30 P.M.

20 **I. INTRODUCTION AND FACTUAL BACKGROUND**

21 During his period of supervised release, Defendant has tested
22 positive for marijuana eight times, been incarcerated for nine
23 days, sustained a conviction for committing a hit-and-run while
24 driving under the influence of alcohol, failed to report the DUI
25 hit-and-run to his Probation Officer, and, following his DUI hit-
26 and-run, tested positive for alcohol on two occasions. Despite all
27 this evidence of Defendant's serious substance abuse issues and
28 need for supervision, he seeks termination of his supervised

1 release on grounds that are neither recognized under the law nor
2 relevant to his conduct while on supervised release. Because of
3 his repeated refusal to comply with the terms of his supervised
4 release, his ongoing substance abuse problem, and the fact that he
5 not only drinks but drives while drunk, the United States seeks an
6 order consistent with the Probation Officer's recommendation:
7 revocation of Defendant's supervised release and reinstatement with
8 the terms and conditions previously imposed, plus the additional
9 condition of six months of home detention with alcohol monitoring.

10 **II. EARLY TERMINATION OF SUPERVISED RELEASE IS PROHIBITED "WITHOUT**
11 **MORE" THAN A MERE GUIDELINES RANGE AMENDMENT**

12 In 1997, the Court sentenced Defendant to 156 months in prison and
13 ten years of supervised release for Conspiracy, Possession With
14 Intent to Distribute Cocaine Base, and Distribution of Cocaine
15 Base. Defendant was released from incarceration in December 2003.
16 Four years later, the United States Sentencing Commission amended
17 the United States Sentencing Guidelines Manual ("Guidelines") with
18 respect to the ranges applicable to cocaine base offenses.

19 Despite acknowledging that he "was already released . . . in
20 November of 1997 when the United States Sentencing Commission
21 amended the guidelines," and that "the Court cannot reduce a prison
22 term that has already been served," Obj. to R&R at 2, 3, Defendant
23 is now before the Court requesting that his supervised release be
24 terminated early so that he can receive "some benefit of the
25 reforms in the Crack Sentencing Guidelines." Id. at 3.

1 The Guidelines are clear, however, that it is Defendant's term of
2 imprisonment, and not termination of his supervised release, that
3 is affected by the amendment to the Guidelines range:

4 In a case in which a defendant is serving a term of
5 imprisonment, and the guideline range applicable to that
6 defendant has subsequently been lowered as a result of an
7 amendment to the Guidelines Manual listed in subsection (c)
8 below, the court may reduce the defendant's term of
9 imprisonment as provided by 18 U.S.C. § 3582(c)(2).

10 U.S. Sentencing Guidelines Manual § 1B1.10(a)(1) (2007 & Supp.)
11 (Policy Statement) (emphasis added).

12 There is no language in the relevant section of the Guidelines
13 authorizing termination of supervised release in this situation.
14 In fact, the Guidelines specifically reject Defendant's proposal
15 that the Court terminate his supervised release early solely
16 because he may have served a shorter term of imprisonment had he
17 been sentenced under the amended Guidelines range:

18 [T]he fact that a defendant may have served a longer term
19 of imprisonment than the court determines would have been
20 appropriate in view of the amended guideline range
21 determined under subsection (b)(1) shall not, without more,
22 provide a basis for early termination of supervised
23 release.

24 U.S. Sentencing Guidelines Manual § 1B1.10 cmt. n.4(b)(2007 &
25 Supp.) (emphasis added); § 1B1.10 cmt. background (2007 & Supp.)
26 ("The authorization of such a discretionary reduction does not
27 otherwise affect the lawfulness of a previously imposed sentence,

1 does not authorize a reduction in any other component of the
2 sentence, and does not entitle a defendant to a reduced term of
3 imprisonment as a matter of right.").

4 In support of his argument for early termination, Defendant has
5 offered no evidence of anything beyond the mere amendment to the
6 Guidelines range. This is plainly insufficient. U.S. Sentencing
7 Guidelines Manual § 1B1.10 cmt. n.4(b)(2007 & Supp.) (noting an
8 amended Guidelines range "shall not, without more, provide a basis
9 for early termination of supervised release").

10 **III. THE TOTALITY OF CIRCUMSTANCES MAKES IT CLEAR THAT DEFENDANT**
11 **SHOULD BE SUBJECT TO ADDITIONAL CONDITIONS**

12 Rather than rely on an amended guideline range "without more," the
13 Court "should take into account the totality of circumstances
14 relevant to a decision to terminate supervised release"
15 U.S. Sentencing Guidelines Manual § 1B1.10 cmt. n.4(b)(2007 &
16 Supp.); § 1B1.10 cmt. background (2007 & Supp.).

17 The totality of circumstances makes it clear not only that
18 Defendant's supervised release should continue, but also that he
19 should be subject to supplementary conditions. In addition to his
20 multiple positive tests for marijuana, the Defendant committed a
21 hit-and-run offense that caused property damage, while driving with
22 a blood alcohol content subsequently measured at .12. Violation
23 Report at 3. This measurement was taken after he was transported
24 to the booking area, id., which suggests that his actual blood
25 alcohol content when he was driving was even higher. Driving while
26 so drunk that he "staggered with every step" when he got out of the
27 vehicle, id., Defendant put himself and others in severe danger.

1 His two positive tests for alcohol after his DUI hit-and-run
2 indicates a defendant who has a severe substance abuse problem and
3 is unwilling to learn from his mistakes.

4 **IV. HOME DETENTION WITH ALCOHOL MONITORING IS APPROPRIATE IN LIGHT**
5 **OF DEFENDANT'S ONGOING SUBSTANCE ABUSE ISSUES**

6 The Probation Office recommends that Defendant's period of
7 Supervised Release be revoked and reinstated with the same terms
8 and conditions previously imposed, with the additional special
9 condition of six months of home detention with alcohol monitoring.

10 The government joins the Probation Office in this recommendation,
11 in light of Defendant's obvious substance abuse problem and its
12 ongoing escalation. It is clear that this Defendant requires the
13 kind of structure, supervision, and monitoring that the Probation
14 Office provides.

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